# RECENT CASE NOTES

ADMIRALTY—PRIZE COURT PROCEEDINGS—PROPERTY SUBJECT TO CONDEMNATION.—A German firm chartered a Russian sailing ship, on May 6, 1914, to carry a cargo of nitrate from Chile to Europe, loading not to begin before July 13, 1914. On that day, the Hamburg firm sold the cargo to the appellant, a Dutch corporation, by a contract according to which the invoice price was to be payable "90 days after receipt of first bill of lading," or if the ship arrived earlier, then "against acceptance of the documents." The appellant was to name the port of arrival, and the cargo, after loading, was to be at its risk. On August 6, the loading was completed, and the appellant was notified. The German firm through their Chilean branch took the 3 bills of lading, with the cargo deliverable to their order. On September 9 they deposited the first bill of lading with their bank in Amsterdam, with instructions not to turn over to the appellant the bills of lading until the invoice was paid. On October 19, the German firm sent the appellant an invoice for the price, with a statement that the amount was due December 9. The cargo was seized as prize at Plymouth, December 6, but the appellant, unaware of the seizure, had written to the German firm's bankers at Amsterdam, who then held two of the bills of lading, enclosing the invoice price with instructions not to pay over the money until they received the third bill of lading. This was received on January 25, 1915, whereupon the bankers paid the German firm, and handed all the bills of lading to the appellant. From the decision of Sir Samuel Evans, President of the Prize Court, holding that the property had not passed to the Dutch buyer, but remained in the German sellers and was subject to condemnation, an appeal was taken to the Privy Council. *Held,* that the cargo was not subject to condemnation, property having passed to the Dutch buyer when the loading was completed. *The Parchim* (1917, P. C.) 117 L. T. 738.

The enemy character of goods seized as prize is determined by property, not by risk. *The Miramichi* [1915] P. 71; *The Odessa* [1916] A. C. 145. Intermediate lienors may carry all the risk of loss, yet may not have property. Still, risk raises an important inference as to property, and a *prima facie* inference as between seller and buyer directly: *Res perit domino. Martineau v. Kitching* (1872) L. R. 7 Q. B. 436, 453. In the instant case, interpreting the contract and the intention of the parties, Lord Parker concluded that from the moment the cargo was loaded and the Dutch buyer notified thereof, a duty to pay arose, all risk of loss fell on the buyer, and the property passed to it. The buyer merely had a credit of ninety days from the time of arrival of the first bill of lading in Europe for the actual payment of the purchase price. The sellers did not retain any *jus disponendi,* as Sir Samuel Evans concluded; but as security for the purchase price the sellers, through their bankers, were to retain control of the bills of lading, the evidence of title, which were not to be turned over to the buyer until the purchase price was paid. See *Mirabita v. Imperial Ottoman Bank* (1878) L. R. 3 Ex. D. 164; *Browne v. Hare* (1858, Ex.) 3 H. & N. 484. The Privy Council appears to have correctly construed the contract as to the time when property was to pass.

CARRIERS—ACTION BY NOMINAL CARRIER AGAINST CARRIER IN POSSESSION—LIABILITY OVER AS BASIS OF RECOVERY.—The plaintiff held himself out as a carrier of freight by boat and received goods for transportation, chartering for the purpose of carrying the goods the cargo space in a vessel owned and operated by the defendant. Because of the unseaworthiness of the ship, the

cargo became a total loss, and the plaintiff brought suit for the value of the cargo, on the warranty of seaworthiness in the charter-party. *Held,* that the plaintiff, whether or not technically a bailee of the cargo, could recover the amount claimed. *Pendleton v. Benner Line* (1918, U. S.) 38 Sup. Ct. 330.

Like anyone who holds himself out as a carrier, though employing a subcontractor to perform the physical transportation, the plaintiff was under a carrier's liability to the shipper. See *Buckland v. Adams Ex. Co.* (1867) 97 Mass. 124; *Transportation Co. v. Bloch Bros.* (1888) 86 Tenn. 392, 6 S. W. 881. As pointed out by Mr. Justice Holmes in the opinion, the right of a bailee to recover full damages against a third person for a wrong affecting the goods was for centuries rested on his liability over to the bailor. Whether all bailees were ever under an insurer's liability to the bailor is by no means clear; but as it became settled that the modern law imposed no such sweeping liability, the courts, after a hard struggle to make the traditional explanation of the right against third persons fit the various cases that arose, finally abandoned the attempt, resting the right squarely on present or prior possession. See *Brewster v. Warner* (1883) 136 Mass. 57; *The Winkfeld* [1902] P. 42; see also Holmes, *Common Law,* 164 *et seq.;* 2 Pollock & Maitland, *History of Eng. Law* (2d ed.) 170 *et. seq.;* Bordwell, *Property in Chattels* (1916) 29 HARV. L. REV. 731. But the traditional explanation failed, not because liability over was not a sufficient basis for recovery, but because, in the case of the ordinary bailee, it was too often lacking. In the principal case, it was the element of present or prior possession that was lacking, or at least doubtful. But liability over being in fact present, both theory and precedent justify the court in allowing recovery under the old theory. It is interesting that the opinion should have been written by Mr. Justice Holmes, who perhaps did more than anyone else to expose the fallacy of the old reasoning as applied to bailees in general.

CONFLICT OF LAWS — NEGOTIABLE INSTRUMENTS — APPLICATION OF RENVOI DOCTRINE.—Cotton brokers in Liverpool agreed to buy cotton from a firm in Alabama, and to accept drafts for the purchase price. In pretended compliance with this contract the Alabama firm drew a draft on the purchasers' bank in Liverpool, to which was attached a forged bill of lading for cotton, but no cotton in fact was shipped. The draft with bill of lading attached was purchased in good faith by the Guaranty Trust Co. of New York, which presented it to the purchasers' bank in Liverpool for acceptance, and it was duly accepted for account of the purchasers. The Guaranty Trust Co. then sold the accepted draft in England, and it was later paid by the acceptors to the ultimate holder, a London bank. On discovering the facts, the acceptors brought action against the Guaranty Trust Co. in the United States District Court for the Southern District of New York to recover back the amount paid. The case turned on whether certain words in the draft referring to the contract for cotton made it a mere conditional order as distinguished from a negotiable bill of exchange. The District Court, applying American law, gave judgment for the acceptors, which was reversed by the Circuit Court of Appeals in a decision reported in (1913) 210 Fed. 810, on the ground that the question of negotiability as against the English acceptors was governed by English law, and that evidence of that law was disregarded by the trial court. Pending a new trial in the District Court, the Guaranty Trust Co. brought suit against the acceptors in the King's Bench Division in England to obtain a declaratory judgment determining what the English law was on the question at issue. *Held,* that the American decision was binding on the parties in England to the extent of deciding that English law governed, that the plaintiff in the English court was entitled to a declara-